

Message

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**From:** Holmstead, Jeff [jeff.holmstead@bracewell.com]  
**Sent:** 5/21/2018 10:30:47 PM  
**To:** Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]  
**CC:** Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]  
**Subject:** Meeting Request -- David Harlow

I spoke with David this afternoon about setting up a meeting to talk about an NSR issue. He said he would be happy to do a meeting but that I should email you to get it on his schedule.

I work with a number of power companies that have supported EPA's proposal to revoke the Clean Power Plan and also submitted comments recommending that EPA replace the CPP with another rule that is based on improving the energy efficiency of existing power plants. We are concerned, however, that doing projects to improve the energy efficiency of existing power plants might trigger NSR. I have been working on this issue with another lawyer in town named Peter Glaser, who represents some of the same companies, and we have some ideas that we would like to discuss with David.

He said that he thought he could meet with us on Thursday or Friday of this week. Here are the times on those days that would work for us:

Thursday (the 24<sup>th</sup>): Any time between 12:30 and 3:30

Friday (the 25<sup>th</sup>): Any time after 10:30

We are hoping to schedule an hour for the meeting. We have a slight preference for Thursday, if that would work for David, but we could do it either day. David also wanted me to mention a couple of other things to you: (1) that he would like Mandy to attend the meeting if possible; and (2) if we have the meeting on Thursday, we should not plan to meet on the 5<sup>th</sup> floor because of a potential drill that might interrupt the meeting.

Thanks, and please let me know if you need anything else from us.

Jeff Holmstead

---

**JEFF HOLMSTEAD**

Partner

[jeff.holmstead@bracewell.com](mailto:jeff.holmstead@bracewell.com)

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Message

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**From:** Wheeler, Andrew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=17A1669EF5B54FBA8CB457845308787E-WHEELER, AN]  
**Sent:** 6/14/2018 9:40:53 PM  
**To:** Segal, Scott [scott.segal@bracewell.com]  
**CC:** Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]; Holmstead, Jeff [jeff.holmstead@bracewell.com]; Wyman, Christine [christine.wyman@bracewell.com]  
**Subject:** Re: Section 401 of the Clean Water Act

Thanks Scott, I appreciate the information. I know Dave Ross has been nonstop WOTUS. I'm pretty booked the next few weeks. Michael will let you know when I come up for air. Thanks again for the good meeting.

Sent from my iPhone

On Jun 14, 2018, at 4:06 PM, Segal, Scott <[scott.segal@bracewell.com](mailto:scott.segal@bracewell.com)> wrote:

Andrew – Thanks for taking the time to meet with us last week. We appreciate your leadership, and all of the good work coming out of EPA.

During our meeting, I mentioned the topic of Clean Water Act Section 401 and how EPA can play a constructive role in improving the 401 process. As follow up, I wanted to let you know that we renewed our request to meet with Dave Ross at OW at his earliest convenience. In addition, at the suggestion of Brittany Bolen, we submitted a request for INGAA to meet with the Administrator. We're eager to continue our conversations with EPA on this topic. If you like, we're happy to bring in the INGAA team, as well as some of its members, to brief you on the challenges associated with Section 401 and other related energy infrastructure topics.

Also, I wanted to make sure that you were aware that in the last week, Congress and the states are starting to become more vocal on this issue. Language on 401 was included in the House FY 2019 Interior and Environment Appropriations report last week (the Cole amendment is attached). In addition, I've attached a letter from the Chairman Richard Barry of the New Hampshire House of Representatives encouraging the Administrator to take action on Section 401. Chairman Barry chairs the Committee on Science, Technology, and Energy, which has primary jurisdiction over the New Hampshire public utility commission and has first-hand knowledge on the need for natural gas infrastructure in New England.

Again, thanks so much for the great work at EPA! Cheers, ss/

.....  
**SCOTT SEGAL**

Partner

[scott.segal@policyres.com](mailto:scott.segal@policyres.com)

T: +1.202.828.5845 | F: +1.800.404.3970

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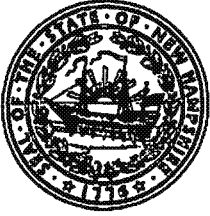
<image1fbb62.JPG>

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<2018 5-24 Barry letter.pdf>

<Cole No 1 .pdf>



# State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

12 Kyle Road  
Merrimack, NH 03054-4528

May 24, 2018

The Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Pruitt:

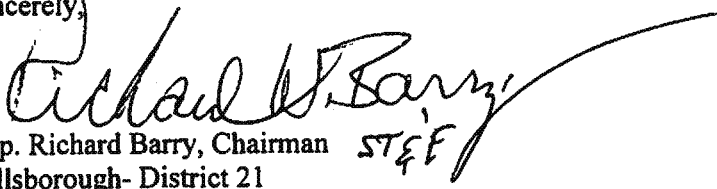
I am writing to request the EPA's consideration for providing some much-needed clarity on the scope of states' Section 401 authority under the Clean Water Act (CWA). New Hampshire and other New England states have just weathered yet another winter challenged by volatile and spiking energy prices, grid reliability, reliance on imported LNG and an increased reliance on coal for our electricity needs. Gas supply constraints have made New England the world's most expensive power market. In January, New Hampshire burned more coal than the State of New York despite being 15 times smaller. We continue to be at the end of the energy pipeline and unable to build the capacity needed to meet our demands in part because other upstream states abusing the process and not allowing the infrastructure to even be considered here at the end of the line.

The permitting process is broken, and I respectfully request your assistance to help address the permitting process that has undermined attempts to expand needed natural gas infrastructure in the region. When used inappropriately, Section 401 of the Clean Water Act has become a political tool to frustrate pipeline development projects and to dictate national energy policy. Some states have manipulated the Section 401 water quality certification process to delay and even deny approvals for pipeline projects by putting off consideration of a project's application well beyond the one-year statutory deadline and by expanding the scope of review well beyond federal water quality standards. As the federal agency charged with authority under the Clean Water Act, the EPA must clarify and ensure that Section 401 is used as was originally intended.

In New Hampshire, we believe we have a rigorous process to evaluate if a proposed project meets environmental standards and is in the best interest of our citizens. As outlined in our state's 10-year Energy plan, the most critical infrastructure need is for natural gas capacity which can help incorporate intermittent renewable sources and provide New England with a much-needed reliable baseload. Without additional natural gas pipeline capacity, New England's economy will continue to be plagued by a host of concerns caused by capacity constraints.

I know siting infrastructure is challenging, and we relish the opportunity to consider such projects. The state appreciates the work the EPA does to protect our environment and I respectfully ask the EPA to issue guidance on the process to ensure the statutory requirements of timing, waiver and scope are being followed properly to ensure the protection of federal water quality standards. We hope the guidance can provide predictability and prevent any single state from dictating energy policy for all other states further up the supply line.

Sincerely,

  
Rep. Richard Barry, Chairman  
Hillsborough- District 21

**Amendment to the Interior and Environment Appropriations Bill**  
**Offered by Mr. Cole of Oklahoma**

Cole #1

V V

On page 57 of the Report, after the paragraph titled "Use Attainability Analysis" insert the following new paragraph:

*Water Quality Certification.*-- The Committee encourages the Administrator of the Environmental Protection Agency to finalize guidance on the implementation of Clean Water Act Section 401 (33 U.S.C. 1341). Such guidance shall reinforce that the statutory time period for review does not exceed one year, that the scope of review is limited to Federal water quality standards, and that waiver of the certification obligation occurs when a State fails to act within one year from the date of application. The guidance shall also include a suggested schedule for a State making a Section 401 decision, which recognizes that the entirety of the State's review must occur within one year.

Message

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**From:** Holmstead, Jeff [jeff.holmstead@bracewell.com]  
**Sent:** 4/5/2018 1:24:44 PM  
**To:** Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]  
**Subject:** Quick Note on Air Liquide Meeting

Air Liquide is a long-time client of the firm, and we do a lot of work for them in a lot of areas, including environmental. I will say that they are committed to doing things the right way and have worked cooperatively with OTAQ staff for quite a while on the issue they want to raise with you. I don't want you to think that they are just walzing in and asking you to solve their problem.

As they will explain, because of the RFS program, they are developing number of landfill gas capture projects that only make sense financially because of the value of the RINs they can generate. They already have approved pathways for a couple of projects where they capture and refine the gas to pipeline quality and then have contracts to ensure that this amount of gas is used downstream for LNG or CNG transportation fuel. They are now developing a very similar project that involving capturing and refining the gas and then using it as a feedstock to produce hydrogen. They have contracts in place to ensure that this hydrogen is used in California as transportation fuel.

For some reason, however, they have not been able to get this pathway approved. They have provided everything that OTAQ has requested, and OTAQ has not raised any issues about their petition. I told them that they might just be caught up in the politics of the RFS program.

Anyway, this is a big issue for Air Liquide, as evidenced by the fact that Mike Graff is going in to meet with you. He's the CEO of Air Liquide North America and the number 2 guy in the international parent company. I think the GC, Kevin Feeney, may also be attending the meeting. They're both very solid guys.

I would liked to have joined the meeting, but the only time that worked for Mike was when I was going to be in Utah. That said, you'll be in good hands with my colleagues Dee Martin and Anna Burhop. They are terrific, and I think you'll enjoy meeting them.

If you have any questions after the meeting, please let me know, and I will make sure we get you the answers.

Thanks for taking the time to meet with them.

Jeff

---

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## Message

**Sent:** 5/9/2018 4:46:13 PM  
**To:** Holmstead, Jeff [jeff.holmstead@bracewell.com]  
**Subject:** RE: Memo

Jeff – Quick update: Think this may be signed as soon as today and announced tmrw morning. Below is quote that our comms team was interested in using:

Clint Woods  
 Deputy Assistant Administrator  
 Office of Air and Radiation, U.S. EPA  
 202.564.6562

---

**From:** Woods, Clint  
**Sent:** Friday, May 4, 2018 10:02 AM  
**To:** Holmstead, Jeff <jeff.holmstead@bracewell.com>  
**Subject:** Re: Memo

Thanks for the kind words and helpful suggestions. We're doing some minor tweaking and intra/interagency box checking but we hope to release next week (and in no case later than May 16).

On Apr 30, 2018, at 5:20 PM, Holmstead, Jeff <[jeff.holmstead@bracewell.com](mailto:jeff.holmstead@bracewell.com)> wrote:

Wow. This is fabulous. Thanks for giving me the opportunity to review it. As you know, I have been advocating for some of these reforms for a long time. I would offer just one very small suggestion in the wording:

The first full paragraph on the top of p. 3 begins with the following sentence: "The Court has also argued that the provisions of Section 109(d)(2)(C)(iv) "enable the Administrator to assist the States in carrying out their statutory role as primary *implementers* of the NAAQS." I wouldn't say that the Court "has also argued." I would say something like "The Court has also noted" or "has also observed."

Here are some things that I would say about this memo.

- Congress clearly understood that there would be tradeoffs involved in the Clean Air Act. That's why it required CASAC to advise the Administrator and the public about the "adverse public health, welfare, social, economic, or energy effects" that would result from the regulatory mandates needed to meet national air quality standards.
- These reforms are long overdue. Under the last Administration, EPA refused to comply with parts of the Clean Air Act that it didn't like. It's good to see that the public will finally get an authoritative accounting of the adverse effects caused by some of EPA's regulatory mandates. Policymakers, including members of Congress,

need to understand the adverse public health, social, and economic effects of the actions that will be needed to meet inflexible air quality standards.

- The Administrator may not be able to take into account the adverse economic and energy effects of the NAAQS, but the Supreme Court has said that it can and should consider the adverse public health and welfare effects involved in setting the NAAQS at a particular level.
- It is good to see that EPA is now taking all its statutory duties seriously, instead of ignoring the ones that it doesn't like.

---

**JEFF HOLMSTEAD**

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**From:** Woods, Clint [<mailto:woods.clint@epa.gov>]

**Sent:** Monday, April 30, 2018 10:17 AM

**To:** Holmstead, Jeff [[jeff.holmstead@bracewell.com](mailto:jeff.holmstead@bracewell.com)].

**Subject:** Memo

Jeff,

For your review, attached is our draft memo. We may still be making a few small changes, but I would welcome your feedback or any relevant statements. We're still on track for rollout tomorrow.

Thanks!

Clint Woods  
Deputy Assistant Administrator

Office of Air and Radiation, U.S. EPA  
202.564.6562

Message

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**From:** Holmstead, Jeff [jeff.holmstead@bracewell.com]  
**Sent:** 5/9/2018 10:41:55 PM  
**To:** Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]  
**Subject:** Re: NAAQS Update

Thanks! I am stuck in a meeting in Houston but will look forward to reading it later tonight. Good luck with the rollout.

Sent from my iPhone

---

**JEFF HOLMSTEAD**

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On May 9, 2018, at 5:25 PM, Woods, Clint <[woods.clint@epa.gov](mailto:woods.clint@epa.gov)> wrote:

Attached memo will be announced tomorrow morning (please keep embargoed until then). We're planning a shorter press release in the morning, followed by an "In Case You Missed It" email with related statements of support mid-day. Feel free to send anything my way, and thanks for your helpful suggestions, feedback, and elbow grease on these issues over the years.

<NAAQS Memo - 5-9-18.pdf>

## Message

**From:** Holmstead, Jeff [jeff.holmstead@bracewell.com]  
**Sent:** 4/26/2018 1:57:42 PM  
**To:** Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]  
**Subject:** Re: Quick Call

That would be great. Just call my cell: Personal Phone / Ex. 6

---

**From:** Woods, Clint <woods.clint@epa.gov>  
**Sent:** Thursday, April 26, 2018 9:55:53 AM  
**To:** Holmstead, Jeff  
**Subject:** Re: Quick Call

Mind if I call at 11:00?

On Apr 26, 2018, at 9:18 AM, Holmstead, Jeff <jeff.holmstead@bracewell.com> wrote:

I'd love to talk with you. Any chance we could talk before 3:00 eastern today? I could do a call any time between now and then.

Jeff

---

**JEFF HOLMSTEAD**

Partner

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**From:** Woods, Clint <woods.clint@epa.gov>  
**Sent:** Thursday, April 26, 2018 9:12:53 AM  
**To:** Holmstead, Jeff  
**Subject:** Quick Call

Jeff,

I hope all is well! Quick question: Any chance you might have a free five minutes for a quick call this week? Think we may have an announcement of interest that I was hoping to discuss with you.

Thanks!

Clint Woods  
Deputy Assistant Administrator  
Office of Air and Radiation, U.S. EPA  
202.564.6562

Message

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**From:** Holmstead, Jeff [jeff.holmstead@bracewell.com]  
**Sent:** 4/30/2018 6:15:14 PM  
**To:** Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]  
**Subject:** Re: Memo

Thanks! I have some plane time this afternoon and will get you something when we land.

Sent from my iPhone

---

**JEFF HOLMSTEAD**

Partner

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On Apr 30, 2018, at 11:41 AM, Woods, Clint <[woods.clint@epa.gov](mailto:woods.clint@epa.gov)> wrote:

Jeff - In case it helps, I think we will be separating this announcement from our ozone designations (which will be rolled out in the next 24 hrs) and announcing something later in the week.

---

**From:** Woods, Clint

**Sent:** Monday, April 30, 2018 10:17 AM

**To:** [jeff.holmstead@bgllp.com](mailto:jeff.holmstead@bgllp.com)

**Subject:** Memo

Jeff,

For your review, attached is our draft memo. We may still be making a few small changes, but I would welcome your feedback or any relevant statements. We're still on track for rollout tomorrow.

Thanks!

Clint Woods  
Deputy Assistant Administrator  
Office of Air and Radiation, U.S. EPA  
202.564.6562

Message

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**From:** Holmstead, Jeff [jeff.holmstead@bracewell.com]  
**Sent:** 4/30/2018 2:17:53 PM  
**To:** Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group  
(FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]  
**Subject:** Automatic reply: Memo

I will be out of the office until May 7 and will have only periodic access to email during this time. If you have a matter that needs immediate attention, please contact my assistant, Melissa Boussefa, at [Personal Privacy bracewell.com](#) or [Personal Privacy](#) and she will put you in touch with someone who can handle it in my absence.

Thanks,  
Jeff

---

**JEFF HOLMSTEAD**

Partner

[jeff.holmstead@bracewell.com](mailto:jeff.holmstead@bracewell.com)

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202.564.6562

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Here are some things that I would say about this memo.

- <!--[if !supportLists]--><!--[endif]-->Congress clearly understood that there would be tradeoffs involved in the Clean Air Act. That's why it required CASAC to advise the Administrator and the public about the "adverse public health, welfare, social, economic, or energy effects" that would result from the regulatory mandates needed to meet national air quality standards.
- <!--[if !supportLists]--><!--[endif]-->These reforms are long overdue. Under the last Administration, EPA refused to comply with parts of the Clean Air Act that it didn't like. It's good to see that the public will finally get an authoritative accounting of the adverse effects caused by some of EPA's regulatory mandates. Policymakers, including members of Congress, need to understand the adverse public health, social, and economic effects of the actions that will be needed to meet inflexible air quality standards.
- <!--[if !supportLists]--><!--[endif]-->The Administrator may not be able to take into account the adverse economic and energy effects of the NAAQS, but the Supreme Court has said that it can and should consider the adverse public health and welfare effects involved in setting the NAAQS at a particular level.

- <!--[if !supportLists]--><!--[endif]-->It is good to see that EPA is now taking all its statutory duties seriously, instead of ignoring the ones that it doesn't like.

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**JEFF HOLMSTEAD**

Partner

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**From:** Woods, Clint [<mailto:woods.clint@epa.gov>]

**Sent:** Monday, April 30, 2018 10:17 AM

**To:** Holmstead, Jeff [[jeff.holmstead@bracewell.com](mailto:jeff.holmstead@bracewell.com)].

**Subject:** Memo

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Clint Woods

Deputy Assistant Administrator

Office of Air and Radiation, U.S. EPA

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